

**(2014) 11 AP CK 0017**

**In the Andhra Pradesh High Court**

**Case No :** Crl. A.M.P. No. 1563 of 2014 in Criminal Appeal No. 900 of 2014

V. Gopal Reddy

APPELLANT

Vs

The State of Telangana

RESPONDENT

---

**Date of Decision :** 18-11-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 389, 389(1)  
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

**Citation :** (2015) 2 ALT(Cri) 118 : (2015) CriLJ 1571 : (2015) 2 RCR(Criminal) 955

**Hon'ble Judges :** U. Durga Prasad Rao, J

**Bench :** Single Bench

**Advocate :** Dhanamjaya, Advocate for the Appellant; P. Kesava Rao, Special Public Prosecutor, Advocate for the Respondent

---

## **Judgement**

U. Durga Prasad Rao, J.—In this petition filed under Section 389 Cr.P.C., the appellant accused seeks stay of conviction passed by learned III Additional Special Judge for CBI Cases, Hyderabad in his judgment dated 01.09.2014 in C.C. No. 3 of 2011 convicting him for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (for short "P.C. Act").

2. On factual side, the accused worked as Senior Divisional Engineer (West) South Central Railway, Secunderabad. In the above C.C. he was ascribed of demanding bribe of Rs. 10,000/- as illegal gratification other than legal remuneration from P.W. 1--the complainant who is the Managing Partner of M/s. Bhaskara Enterprises, Hyderabad for clearing variation bills in respect of the civil contract works undertaken by the said Corporation. On the complaint of P.W. 1, Inspector of Police, CBI registered FIR and arranged trap and on 25.06.2010 the accused was caught red-handed while demanding and accepting bribe amount of Rs. 10,000/- from P.W. 1. After full dressed trial, the trial Court found the accused guilty of the charges levelled under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act and accordingly convicted and sentenced him.

Hence the appeal and instant application by the appellant/accused.

3. The petitioner/appellant seeks suspension of operation of conviction pending appeal on the following grounds:

a) No official favour was pending with accused by the date of alleged demand since no bills were pending with him and the trial Court misread the facts and evidence in this regard particularly Ex. P. 2--file which does not contain the bill relating to Rs. 40,00,000/- and so there was no occasion for accused to demand bribe. It is pleaded that mere recovery of the amount dehors of the other circumstances would not prove the guilt and the petitioner has strong grounds to convince the appellate court to succeed in the appeal.

b) It is pleaded that the petitioner joined Indian Railways as Junior Engineer in the year 1981 and worked in different capacities at different places rendering outstanding service to the South Central Railway and all through, he commanded good reputation as an Officer having outstanding calibre, ability and integrity and received General Manager's Medals four times and was recommended for Railway Minister's Award three times which is evident from Exs. D. 23, D. 24, D. 27 and D. 28 and there were no adverse remarks against him till date and in view of it, suspension of conviction may be ordered considering his case as a rarest of the rare case.

c) Pursuant to the conviction recorded by the trial Court, the department proposes to initiate action to dismiss him from service as per the Service Rules and in that event, the petitioner and his family members will suffer a lot. Further, if the petitioner is removed from service, his morale will be effected and so also the other honest employees. Since the appeal is a recent one and it will take sometime for disposal of the same, if he is terminated from service in the meanwhile, he has to suffer a lot.

4. Heard arguments of Sri Ch. Dhanamjaya; learned counsel for petitioner/appellant and Sri P. Kesava Rao, learned Special Standing Counsel for CBI (for short "Spl. S.C.")

5. Seeking suspension of conviction, learned counsel for appellant firstly submitted that there are very good grounds to urge before this Court during hearing of the appeal to convince the Court that conviction recorded against him was on an erroneous appreciation of facts and law inasmuch as no bill was pending with the petitioner during the relevant period to demand any bribe from the complainant and a false case was foisted against him and since it will take some time to hear the appeal, his request for suspension of conviction may be considered.

a) Projecting the grounds for seeking suspension of conviction, learned counsel firstly argued that following the conviction, the department is contemplating to initiate proceedings to dismiss him from service in which case, the petitioner and his family members who are solely dependant on his job will become destitutes

and therefore, his case may be considered sympathetically.

b) Nextly, he argued that more than the fear of losing the job, the petitioner's concern is that till before this case, the petitioner rendered meritorious, honest and blemishless service to the Indian Railways which is amply borne out by various merit certificates issued by the department officials under Exs. D. 23, D. 24, D. 27 and D. 28 and if the petitioner were to be dismissed from service on the sole ground of conviction in this case, the morale of not only the petitioner but also his ilk of other honest officers would be severely effected and that would give a message that there is no consideration for merit and honesty. Therefore, treating his past spotless record as an exceptional circumstance, suspension of conviction may be granted to him. In this regard to buttress his argument, he relied upon the decision reported in Pravinkumar Paraskumar Gokhroo Vs. State of Gujarat and Another, , He thus prayed to allow the petition.

6. Per contra, vehemently opposing the petition learned Spl. S.C. argued that Hon"ble Apex Court and various High Courts have categorically laid down that apprehension of losing of the job pursuant to the conviction in a bribery case cannot be taken as rare and exceptional circumstance to grant suspension of conviction, for, if succeed in the appeal, the petitioner can get back his employment with all benefits attached to his job and therefore, he cannot project the threat of losing job as either exceptional circumstance or irretrievable loss. In support of his arguments, he relied upon the following decisions:

1) K.C. Sareen Vs. C.B.I., Chandigarh,

2) State of Maharashtra through CBI, Anti Corruption Branch, Mumbai Vs. Balakrishna Dattatrya Kumbhar,

a) Regarding meritorious track-record of the petitioner, he argued that merit and morality are two different aspects and the petitioner cannot plead his alleged past track-record as a ground to seek suspension of conviction particularly when he was convicted in a case of moral turpitude after full fledged trial. He further argued that not only this case, the CBI police during his house search on the date of trap found hard cash of Rs. 73,80,000/- at the residence of accused and seized it and registered a case in RC No. 19(A)/2010 on 02.07.2010 and investigated the matter and filed charge-sheet before the CBI Court for his possessing assets worth Rs. 3 Crores disproportionate to his known source of income and as such, the petitioner cannot harp his honesty and integrity as a ground for suspension of conviction.

b) Nextly, he argued that if the conviction is suspended and petition were to be allowed to continue in the same office there will be every likelihood of his influencing the witnesses in disproportionate assets case. He thus prayed to dismiss the petition.

7. In the light of above divergent arguments, the point for determination in this petition is:

"Whether there are merits in this petition to allow?"

8. POINT: The petitioner seeks suspension of conviction on two main grounds. Firstly, in view of looming threat of dismissal from service and his past meritorious conduct which he portrays as an exceptional circumstance for considering his case.

a) So far as first ground is concerned, the law on this aspect is no more *res integra*. Hon'ble Apex Court on a number of occasions has categorically laid down that the apprehension of losing of job cannot be a ground to consider the request of concerned petitioner to suspend conviction. The Apex Court in K.C. Sareen's case (*supra*) while deprecating granting of stay of conviction, held thus:

"xx xx...Though power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. The Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance."

"... when conviction is on a corruption charge against a public servant the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of the appeal against conviction even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision".

b) Then, on the aspect whether threat of dismissal from service would constitute an exceptional circumstance for awarding stay of conviction, the Supreme Court in Balakrishna Dattatrya Kumbha's case (*supra*) held thus:

"Thus, in view of the aforesaid discussion, a clear picture emerges to the effect that the appellate court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the court as regards the evil that is likely to befall him, if the said conviction is not suspended. The court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examine whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done.

(Emphasis supplied)

The Apex Court in Balakrishna Dattatrya Kumbhar's case (*supra*) while deprecating the order of High Court of Bombay suspending the conviction pending appeal to save the appellant from losing the job, has observed thus:

"The aforesaid order is therefore, certainly not sustainable in law if examined in

light of the aforementioned judgments of this Court, Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights" violation in itself as it leads to systematic economic crimes. Thus, in the aforesaid backdrop, the High Court should not have passed the said order of suspension of sentence in a case involving corruption. It was certainly not the case where damage if done, could not be undone as the employee/Respondent if ultimately succeeds, could claim all consequential benefits."

(Emphasis supplied)

c) Needless to say that the above observation of Apex Court applies with all its force to the case on hand.

9. Then coming to the second ground projected by the petitioner, no doubt the copies of the merit certificates and Annual Confidential Reports submitted by the petitioner for perusal of this Court would show his excellent track-record and there is no demur in it. The ACRs would show that during 1992 to 1994 his record was "very good", during 1995 to 2000, 2002 to 2012--"outstanding". The ACRs would further show he received General Manager's Medals for four times and was recommended for Railway Board's Award for three times. The citations and merit certificates submitted by the petitioner read that he was innovative in his work, carried out all the works entrusted to him. Many such encomiums were made in the citations regarding his merit, ability, hard work etc qualities. However, as rightly pointed by learned Spl. S.C., merit and morality are two different facets and dimensions of a man. Merit and hard work relate to the dedication of one's intellectual capabilities to a particular cause or for institution he works in. Whereas morality is altogether a different qualitative attitude of a man. Not to lust for illegal wealth is a moral attitude. Merit and morale being two different concepts, nobody can vouchsafe that one invariably follow the other. Therefore, the petitioner cannot project his track-record as a ground for seeking suspension of conviction.

a) At this juncture, this Court cannot disdain the submission of learned Spl. S.C. that an amount of Rs. 73,80,000/- was found during the house search following the trap and the resultant investigation culminated in finding petitioner amassing disproportionate assets worth Rs. 3 Crores. It is true that the veracity of the accusation has to be tested on the anvil of trial but there is no denial of the fact that a charge-sheet was indeed filed and case is pending. So this Court is constrained to reject his past track-record as an exceptional circumstance to consider his prayer for suspending the conviction.

b) The cited decision will not help petitioner's case. In that case, the suspension of conviction was granted depending upon the factual circumstances. In that case, the trap amount was not found on the person of accused but on the wooden cot and admittedly accused has not touched the money offered by way of bribe. Further, the complainant (P.W. 1) in that case turned hostile and

admitted that the accused had not demanded any bribe. That is not the case here.

So at the outset, none of the grounds projected are convincing enough to exercise the judicial discretion in favour of the petitioner.

10. Accordingly, this CrI. A.M.P. No. 1563 of 2014 is dismissed.